

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN DAVID GANN

Petitioner,

2:00-cv-1644-GEB-CMK-P

vs.

ROBERT L. AYERS

Respondent.

ORDER

\_\_\_\_\_/

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's August 30, 2005 denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of

1 appealability indicating which issues satisfy the required  
2 showing or must state the reasons why such a certificate should  
3 not issue. Fed. R. App. P. 22(b).

4 The Magistrate Judge's March 3, 2005 findings and  
5 recommendations found that petitioner's application for habeas  
6 relief was barred by the Antiterrosim and Effective Death Penalty  
7 Act (AEDPA) and recommended that the petition be denied. As the  
8 federal district court cannot review petitioner's habeas  
9 application due to AEDPA's statute of limitations, petitioner  
10 cannot make a substantial showing of the denial of a  
11 constitutional right. Accordingly, a certificate of  
12 appealability should not issue in this action.

13 DATED: December 6, 2005

14 /s/ Garland E. Burrell, Jr.  
15 GARLAND E. BURRELL, JR.  
16 United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26